

DISPUTE AVOIDANCE, ADUDICATION UNDER ICC AND FIDIC

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A. Overview of Prevention Approaches

- 1. ADR (DB, mediation, adjudication, expertise)
- 2. Concept of DB/CRD (DRB, DAB, CDB)
- 3. Success and difficulties met in practice
on 4 major projects :
 - Xiaolangdi Hydro-electric Dam (China)
 - High Speed Railways (LGV - SEA Tours-Bordeaux (France)
 - Canal de Panama
 - Alptransit – Gothard et Lötschberg Tunnels (Switzerland)

B.1 Concept of Dispute Board (DB/CRD)

- Definition: DB/CRD is an independent body intervening at the request of any party in case of disagreement: issuance of a recommendation or a decision within 90/84 days after filing of a request.
- Types of DB/CRD: DRB, DAB, CDB

B.2 Objectives, appeal, setting up

- Objectives: assistance in the project development, cash flow management
- Intervention of tribunals: only after the issuance of the DB recommendation/decision; duty to implement the decision; jurisdiction of tribunals limited
- Setting-up of the DB: at the start of the project is recommended (has occurred also in the course of the project)

B.3 DB's activities and Rules

- DB/CRD's activities:
 - (i) First meeting with Parties, presentation of the practical, additional procedural rules
 - (ii) Site visits every 3-4 months with inspection of the performed works, work schedule, delays, claims and encountered difficulties
 - (iii) Preparation, issuance of recommendation /decisions
- DB Rules: mostly ICC et FIDIC Rules used for infrastructural and industrial projects

C. Success and difficulties in Practice

- Prevention et resolution of disputes only by informal assistance (Dam in China – more than US\$ 1 billion).
- Prevention et resolution of disputes by informal/formal referrals (High Speed Railways France - € 8 billion).
- Partial resolution without informal assistance informal, dissenting opinions, several arbitrations (Panama Canal – claims of more than US\$ 5 billion).
- Dispute Resolution by negotiation and with a one man DB (Gothard/Lötschberg – more than CHF 14 billion).

D. Use of DB/CRD BY PARTIES

1. Careful selection of the DB Members by Parties (such as qualifications/experiences, applicable law, availability).
2. Selection by Parties of the DB approach (namely recommendation or decision)
3. Use of informal assistance and if required of formal request
4. Simplification of the proceedings (2 steps - request and response, definition of the volume of documents, etc.)